

BRIEF

IN THE SUPREME COURT OF
THE UNITED STATES

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In the Matter of

RALPH A. STILWELL,

*Bankrupt.*In Bankruptcy
No. 16461

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The bankrupt has filed his petition for a discharge in bankruptcy with the Clerk of the District Court at Buffalo, New York, on or about March 23, 1931. On or about the 26th day of September, 1941, the said District Court ordered that a hearing be had upon the said petition of the bankrupt on the 27th day of October, 1941, in the United States Court House at Buffalo, New York. It was further ordered that notice of this hearing be published in the "Jamestown Post-Journal" at least once, ten days prior to said return date and that the clerk of said court send or cause to be sent by mail to all known creditors, a copy of said notice at least ten days prior to said return date. Notice of this hearing was published and mailed to creditors in pursuance of said order. Five creditors of the bankrupt represented by Falk, Phillips, Twelvetrees & Falk, their attorneys, filed specifications of objections to the bankrupt's discharge substantially setting forth the following objections:

1. That bankrupt destroyed or failed to keep books of account.

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2. That bankrupt has been guilty of undue delay in prosecuting his application for discharge resulting in prejudice to creditors. 25
3. That the bankrupt has abandoned his application for discharge.

After the hearing, the District Court for the Western District of New York, found that the creditors did not sustain the first two grounds of objection but denied the discharge on the ground that the bankrupt has abandoned his application for discharge.

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POINT I

The Bankrupt should not be denied a discharge in bankruptcy on the ground other than those specified in Section 14 (c) of the Bankruptcy Act as amended.

The district Court having denied the first two grounds of objection to the granting of the bankrupt's discharge, there remains the third ground of objection to be considered on behalf of the creditors. Section 14 (b) of the Bankruptcy Act directs the court to discharge the bankrupt if no objections have been filed. This section is mandatory in its terms and the court is directed to hear the bankrupt's application for discharge and the proof on objections to the discharge in the event that objections are filed. Also, the court under this subdivision is required to investigate the merits of the application. 27

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28 Section 14 (c) of the act requires the court to grant the discharge unless he is satisfied that the bankrupt has done the things named in that subdivision of the statute.

Since the first two grounds of objection have been dismissed by the district court it must be assumed that the bankrupt in this case has not committed any of the acts named in the statute barring his discharge.

29 The district court denied the bankrupt's discharge after a date had been set for a hearing after objecting creditors appeared and filed objections thereto, on a ground not specified in the bankruptcy act. This denial extended the provisions of the act, amending it to include another ground on which to deny the bankrupt's discharge, therefore, penalizing the bankrupt as heavily as the commission of the crimes and frauds mentioned in the act.

'This has been held to be too great a penalty on the bankrupt who would be thereby barred forever from a discharge.

30 *In re Neal*, 270 F 289;
In re Silverman, 157 F. 675.

In the case of *In re Wolff*, 132 F. 396, the court said that Section 14 of the Bankruptcy Act specified the causes for which a discharge may be refused. Laches of the bankrupt in not bringing on for trial of the issues raised by a creditor's opposition to his application for his discharge is not one of the enumerated causes, and the

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court is not authorized to extend the provisions of that act and refuse a discharge upon any other grounds than those therein set forth. 31

In the case of *Lockhart vs. Edel*, 23 F (2d) 912 it was said that the provisions of the statute relating to the bankrupt's discharge are not to be extended by construction, and are to be construed liberally in favor of the bankrupt.

These statutory grounds for opposition to a discharge are exclusive and unless one of these grounds are found the discharge must be granted. *Bluthenthal vs. Jones*, 32 208 U.S. 64; *Matter of Robinson*, 266 F. 970.

There remains no statutory grounds in the creditor's specifications of objections for denial of the discharge. Undoubtedly, the specifications should contain allegations sufficient to bring the objections within one or more of the grounds enumerated in Section 14 (c).

It has been held that if the specifications fail to allege a statutory grounds for the denial of a discharge they will be disregarded although not excepted to. 33

In re McCarthy, 170 F. 859;

In re Scheffler, 68 F. (2d) 902;

In re Little, 65 F (2d) 777.

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POINT II

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It is respectfully submitted that the specifications of objections to the granting of the discharge failed to allege any grounds upon which to deny the bankrupt his discharge and that the decision and judgment of the court below in denying the discharge should be reviewed and the Writ of Certiorari Granted.

Respectfully.

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